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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

HAVENS REALTY CORPORATION and ROSE JONES,
Petitioners,

vs.

SYLVIA COLEMAN, R. KENT WILLIS and
HOUSING OPPORTUNITIES MADE EQUAL,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF AMICI CURIA THE NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING, INC., THE CUYAHOGA PLAN, ECHO HOUSING ASSISTANCE CENTER, FAIR HOUSING CENTER OF DETROIT, MICHIGAN, FAIR HOUSING CENTER OF TOLEDO, OHIO, FAIR HOUSING CONGRESS OF SOUTHERN CALIFORNIA, FAIR HOUSING COUNCIL OF BERGEN COUNTY, NEW JERSEY, FAIR HOUSING COUNCIL OF ORANGE COUNTY, CALIFORNIA, FAIR HOUSING COUNCIL OF THE SAN FERNANDO VALLEY, GREATER KANSAS CITY HOUSING INFORMATION CENTER, HOUSING COUNCIL OF YORK, PENNSYLVANIA,

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HOUSING OPPORTUNITIES CORPORATION OF MEMPHIS, TENNESSEE,
HOUSING OPPORTUNITIES MADE EQUAL COMMITTEE OF GREATER CINCINNATI,
HOUSING OPPORTUNITIES MADE EQUAL, INC., OF BUFFALO, NEW YORK,
METRO FAIR HOUSING SERVICES OF DECATUR, GEORGIA,
METRO HOUSING RESOURCES OF ST. LOUIS, MISSOURI,
METROPOLITAN FAIR HOUSING COUNCIL OF GREATER OKLAHOMA CITY,
METROPOLITAN WASHINGTON PLANNING AND HOUSING ASSOCIATION,
MIDPENINSULA CITIZENS FOR FAIR HOUSING,
MONTGOMERY COUNTY (OHIO) FAIR HOUSING CENTER,
MORRIS COUNTY (NEW JERSEY) FAIR HOUSING COUNCIL,
NORTHWEST INDIANA OPEN HOUSING CENTER,
OAK PARK (ILLINOIS) HOUSING CENTER,
OPEN HOUSING CENTER, INC. OF NEW YORK CITY,
SUBURBAN MARYLAND FAIR HOUSING, INC.,
SUFFOLK HOUSING SERVICES,
SOUTH SUBURBAN HOUSING CENTER,
WEST SUBURBAN FAIR HOUSING CENTER,
WESTCHESTER RESIDENTIAL OPPORTUNITIES, and WESTSIDE FAIR HOUSING COUNCIL.

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INTEREST OF AMICI CURIA

The National Committee Against Discrimination in Housing, Inc. (NCDH) and its affiliated fair housing centers submit this brief as amici curia in support of the respondents.[1] In particular, amici urge that this Court affirm the judgment of the United States Court of Appeals for the Fourth Circuit that respondent Housing Opportunities Made Equal, Inc. (HOME) has standing to maintain this action.

NCDH is a private nonprofit corporation founded in 1950 to eliminate racial discrimination in housing and promote the principle of equal housing opportunity. NCDH carries out programs of research, training, public information, and litigation aimed at achieving the goal of fair housing in fact, as well as in legal theory. Among other things, NCDH played an active role in securing passage of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 *et seq.* (hereafter "the Fair Housing Act"). NCDH also serves as the national spokesman for approximately 50 local fair housing centers, many of which have expressly joined in this brief.

Fair housing centers are locally based organizations dedicated to achieving the goal of open housing within their own community or metropolitan area. These organizations vary in size, origin, and function. Some, such as the West Suburban Housing Center of Glen Ellyn, Illinois, and Metro Fair Housing Services of Decatur, Georgia, were founded by local residents in response to specific problems or

[1] All parties of record have consented to the filing of this brief pursuant to Supreme Court Rule 36.2. Letters indicating the consent of the parties have been filed with this Court.

practices, such as blockbusting, racial steering, panic selling, or redlining. These organizations tend to focus their activities on eliminating particular practices which have a direct, adverse impact on their community.

Others, such as the Metropolitan Milwaukee Fair Housing Council, the Fair Housing Center of Toledo, Ohio, and Metropolitan Washington Planning and Housing Association are essentially advocacy organizations established by local citizens or community groups to combat all forms of housing discrimination within a large metropolitan area. These organizations engage in a wide range of activities which may include lobbying for enactment of fair housing legislation, researching new or subtle forms of housing discrimination, working with the real estate or construction industries for expansion of housing opportunities, and providing technical assistance or training to government agencies or private organizations.

Still others, such as the Open Housing Center of New York City, the Greater Kansas City Housing Information Service, the Fair Housing Council of the San Fernando Valley, and the Cuyahoga Plan of Cleveland, are primarily service organizations formed to promote fair housing and expand housing opportunities through the provision of client services. Respondent HOME is one such organization.

Two of the most common-and most important-services provided by fair housing organizations are fair housing complaint assistance and housing counseling and referral services. Organizations which provide the first type of service generally respond to complaints from individuals who believe they have been denied housing on a prohibited basis, by dispatching a "tester," "auditor," or "checker" of a different race or sex to inquire about the same housing

opportunity sought by the complainant. The purpose of this inquiry is to ascertain whether the dwelling is still available and whether similarly situated individuals are being treated differently based on their race, sex, or national origin. If the test indicates that a discriminatory housing practice may have taken place, the organization attempts to conciliate the matter by securing the desired housing for the complainant. If these efforts fail, the center either helps the victim file a complaint with an appropriate enforcement agency or refers the complainant to a private attorney. Because it is often impossible for minority homeseekers to determine whether they have been denied housing for discriminatory reasons without such outside assistance, these organizations and their employees play an indispensable role in securing the homeseeker's right to equal opportunity in housing. *See* n.12 *infra.*

Fair housing organizations which offer the second type of service seek to expand housing opportunities and, in some cases, combat the effects of racial steering, by making housing information available to all homeseekers regardless of race. Under these programs, professional housing counselors or trained volunteers provide clients with a list of vacancies within the client's price range, including units in areas from which the client's race previously has been excluded. The housing counselor then furnishes information on schools, jobs, public services, and other amenities in the community and instructions on how to proceed to look for a dwelling. Some programs also provide transportation and escort services to assist the homeseeker in actually securing a unit. To ensure the accuracy of its information, most of those organizations conduct regular surveys, both by telephone and on-site visits, to update their list of available units. Many also undertake fair housing "tests" or "audits"

as a means of verifying the accuracy of their information and determining whether housing opportunities are, in fact, being made available on a nondiscriminatory basis. Like the investigation of fair housing complaints, this service plays a fundamental role in assisting others in the exercise of their right to equal opportunity in housing.

Most fair housing centers offer their services to the public free of charge. In addition, many centers are now providing these services pursuant to contracts with local governments or private firms. For example, the Westside Fair Housing Council of Los Angeles, the Metropolitan Fair Housing Council of Greater Oklahoma City, the Housing Opportunities Corporation of Memphis, and Housing Opportunities Made Equal of Greater Cincinnati, among others, receive funding from local governments to operate a fair housing complaint service for city residents. Similarly, the Fair Housing Council of Bergen County, the Open Housing Center of New York City, the Fair Housing Center of Detroit, and respondent HOME are under contract with municipal governments or local corporations to provide housing counseling and referral services either to municipal residents or corporate employees.

In light of the goals, functions, and activities of fair housing centers, it is apparent that these organizations have a vital interest in the outcome of this litigation. In the case at bar, HOME seeks to establish standing, first, on its own behalf to redress an alleged interference with the operation of one of its principal service programs, and second, on behalf of its members to secure their right to the benefits of interracial associations. As noted above, many fair housing centers operate professional service programs similar to those run by HOME. Accordingly, it is important for these organizations that HOME be accorded standing to challenge

conduct which directly interferes with the efficient operation of its programs. Similarly, many fair housing organizations were founded by residents of a community for the express purpose of protecting their right to live in an integrated society. Accordingly, these organizations are deeply concerned that HOME be permitted to bring this action to assert the very rights of its members which it was formed to protect. It is for these reasons that amici submit this brief in support of the respondents and urge that this Court affirm the judgment of the court below.

STATEMENT OF THE CASE

HOME is a membership organization whose principal purpose is "to make equal opportunity in housing a reality in the Richmond Metropolitan Area." (App. 13).[2] Its goals include eliminating "unlawful racially discriminatory housing practices that cause injury to its members" and to persons who reside, or wish to reside, in the Richmond metropolitan area and securing to "all such persons the right to the important social, professional, business, economic and political benefits of interracial associations that arise from living in integrated communities." *Id.*

To achieve these goals, HOME engages in a number of programs and activities. Chief among these is a housing counseling and referral service designed "to assist and aid individuals of all races in obtaining housing throughout the Richmond Metropolitan Area." (App. 14). HOME also operates a discrimination complaint service geared toward "[i]nvestigating allegations of discrimination and referring complaints to appropriate state and federal agencies." *Id.*

[2]All references to the "App." are to the Joint Appendix.

These services are similar to those furnished by other fair housing organizations.

During the period covered by the complaint, HOME operated a portion of its housing counseling and referral service pursuant to a contract with the City of Richmond.[3] Under this contract, HOME agreed to develop and maintain up-to-date information about housing vacancies in the Richmond area. Among other things, the contract required on-site visits by HOME employees to gather information concerning the cost, location, and suitability of available units. DGS Contract #98167E, p. 11. This information was to be used by HOME counselors in helping clients locate suitable dwellings in the Richmond area. *Id.* at 11. The contract also contained performance standards which required HOME, during the contract period, to identify no fewer than 360 low cost housing vacancies and serve no fewer than 600 clients from the City of Richmond. *Id.* at 12.

On January 9, 1979, HOME brought this action, along with co-plaintiffs Paul Allen Coles, Sylvia Coleman, and R. Kent Willis, to challenge a pattern of racially discriminatory housing practices engaged in by petitioner Havens Realty Corporation and one of its employees. According to the complaint, respondents Coleman and Willis were employed by HOME and "consulted with defendants with regard to available rentals in the course of their employment." (App. 13).[4] The complaint alleges that during these and subsequent contacts with petitioner Havens Realty, HOME employees

[3] *See* DGS Contract #98167E, appended to the Brief of Amicus Curiae City of Richmond, which provided funding for a "Low Cost Rental Housing Locator Service" for the period from August 22, 1977 to August 21, 1978.

[4] The initial contacts with petitioner Havens Realty were made in connection with HOME's Low Cost Rental Housing Locator Service Project. *See* n.3 *supra*.

Sylvia Coleman, R. Kent Willis, and John Barr were given conflicting information concerning vacancies in petitioners' apartment complexes depending on the race of the employee. (App. 16-17).[5] For example, respondent Coleman, who is black, was repeatedly informed by the petitioners that no apartments were available in predominantly white buildings when, in fact, there were suitable vacancies. *Id.*

The complaint further alleges that the petitioners engaged in a persistent pattern and practice of racial steering by showing only white customers rental units in a building occupied primarily by whites, refusing or failing to show black customers rental units in that building, and on occasion steering black customers toward an apartment building which had a greater number of blacks. (App. 15). The complaint also states that the practice of racial steering "contributes to maintaining existing neighborhood segregation and inhibits the development of stable racially integrated neighborhoods." (App. 14).

Finally, with respect to the injury sustained by HOME, the complaint states that "HOME has been frustrated by defendants' racial steering practices in its efforts to assist equal access to housing through counseling and other referral services" and "has had to devote significant resources to identify and counteract the defendant's [sic] racially discriminatory practices." (App. 17). In addition, it alleges that "HOME members have, as a result of defendants' practices, been deprived of the right to the important social, professional, business and economic,

[5]While the complaint does not identify John Barr as an employee of HOME, it is readily inferable from his description as a tester that he was acting on behalf of HOME. Moreover, plaintiffs have indicated that during this period he was, in fact, employed by HOME. (App. 40).

political and aesthetic benefits of interracial associations that arise from living in integrated communities...." (App. 17-18).

On February 16, 1979, the district court entered an order dismissing HOME, Coleman, and Willis as party plaintiffs on the ground that they lacked standing to sue. (App. 33-34).[6] On September 18, 1980, the United States Court of Appeals for the Fourth Circuit reversed the decision of the district court and remanded. (App. 63-81). This Court granted certiorari on April 20, 1981.

SUMMARY OF ARGUMENT

I

Respondent HOME has standing to sue on its own behalf. HOME has alleged a concrete injury to itself resulting from

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[6]The district court also held that all claims under the Fair Housing Act which were based on acts that occurred more than 180 days prior to the filing of the complaint were time barred. (App. 33). Since at least one act of discrimination which adversely affected HOME - the incident involving John Barr on July 13, 1978 - occurred within 180 days of the filing of the complaint, HOME's claims under the Fair Housing Act are not time barred.

In addition, the acts of discrimination described in the complaint constitute a continuing practice of racial steering whose limitation period did not commence to run until the last act of discrimination alleged in the complaint. As more fully discussed in the Brief of Respondents, the principle of continuing violations has been held to apply both to Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq., see, e.g., Ass'n Against Discrimination v. City of Bridgeport,* 647 F.2d 256 (2d Cir. 1981); *Cedeck v. Hamiltonian Federal Savings & Loan Ass'n,* 551 F.2d 1136 (8th Cir. 1977); *Macklin v. Spector Freight Systems, Inc.,* 478 F.2d 979 (D.C. Cir. 1973); and to the Fair Housing Act. *See. e.g., Baker v. F & F Investment,* 420 F.2d 1191 (7th Cir.), *cert. denied,* 400 U.S. 821 (1970); *Fair Housing Council of Bergen County v. Eastern Bergen County Multiple Listing Serv. Inc.,* 422 F. Supp. 1071 (D.N.J. 1976).

the petitioners' illegal practice of racial steering. Specifically, HOME has been deprived of its right, under section 804(d) of the Fair Housing Act, 42 U.S.C. 3604(d), to receive accurate information on housing vacancies without regard to race. In addition, the petitioners' unlawful conduct has interfered with HOME's ability to render effective service to its clients under its housing counseling and referral program.

The fact that HOME operates its housing counseling and referral service out of a desire to achieve open housing in the Richmond metropolitan area, rather than to make a profit, does not deprive the organization of standing to sue on its own behalf. Regardless of its motivation in undertaking these activities, HOME has alleged an injury in fact to the efficient operation of one of its principal programs.

II

HOME also has standing to sue on behalf of its members. HOME has alleged that the petitioners' practice of racial steering has inhibited the development of racially integrated neighborhoods within Henrico County and, as a result, has deprived HOME members of the important benefits of interracial associations that arise from living in integrated communities. These injuries are sufficient to confer standing on HOME as a representative of its members under the Court's decisions in *Gladstone, Realtors* v. *Village of Bellwood,* 441 U.S. 91 (1979) (hereafter *"Village of Bellwood")* and *Hunt* v. *Washington State Apple Advertising Commission,* 432 U.S. 333 (1977).

While the complaint in this case does not specify where HOME's members reside, one can readily infer from the complaint that some HOME members reside in those neighborhoods in Henrico County which are directly

affected by the petitioners' practices. Indeed, on remand Home will attempt to establish that some of its members actually reside in one of the apartment complexes involved in this case. Accordingly, since this case is still at the pleading stage, the allegations are sufficient to confer standing on HOME to sue as a representative of its members.

ARGUMENT

I.

HOME HAS STANDING TO SEEK REDRESS FOR INJURIES SUSTAINED BY THE ORGANIZATION

Organizations are entitled to sue on their own behalf to redress injuries to themselves. *NAACP* v. *Alabama,* 357 U.S. 449 (1958); *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123 (1951); *Pierce* v. *Society of Sisters,* 268 U.S. 510 (1925). When an organization seeks to establish standing to sue on its own behalf, the question is, as with other litigants, "whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' [as] to warrant his invocation of federal court jurisdiction." *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.,* 429 U.S. 252, 261 (1977), *quoting Warth* v. *Seldin,* 422 U.S. 490, 498-99 (1975), and *Baker* v. *Carr,* 369 U.S. 186, 204 (1962). As defined by this Court, this requirement means that a plaintiff must show that he personally has suffered some actual or threatened injury as a result of the defendant's conduct and that his injury is likely to be redressed by the relief requested. *Village of Bellwood,* 441 U.S. at 99-100; *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.,* 438 U.S. 59, 72 (1978);

Simon v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 28 (1976).

This injury need not be of great or special significance. *United States* v. *SCRAP*, 412 U.S. 669, 689 n.14 (1973). Nor must the requisite harm be pecuniary in nature. *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. at 262-63; *Sierra Club* v. *Morton*, 405 U.S. 727, 734 (1972); *Data Processing Service* v. *Camp*, 397 U.S. 150, 154 (1970). Nevertheless, the injury must be "distinct and palpable," *Warth* v. *Seldin*, 422 U.S. at 501, and must be one sustained by the organization itself. *Id.*[7]

In the instant case, HOME is a "person," as defined by the Fair Housing Act, 42 U.S.C. 3602(d), and therefore, is entitled to sue to enforce rights afforded to persons under the Act. *Broadmoor Improvement Association, Inc.* v. *Stan Weber & Associates, Inc.*, 597 F.2d 568, 569 (5th Cir.

[7]This Court has also held that there are prudential limitations on standing which, among other things, require that plaintiffs assert their own legal rights and not rely on the legal rights of third parties. *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. at 80; *Warth v. Seldin*, 422 U.S. at 499.

In *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), residents of an apartment complex brought an action under the Fair Housing Act to vindicate the rights of nonparties who had been denied apartments because of their race. In holding that the tenants had standing, this Court noted that Congress intended standing under the Fair Housing Act to be "as broa|d| as is permitted by Article III of the Constitution," thereby overriding prudential concerns about standing. *Id.* at 209. *See also Village of Bellwood*, 441 U.S. at 109. Moreover, in the instant case, respondent HOME sues to enforce its own legal rights under the Fair Housing Act. Accordingly, this case does not involve jus tertii standing and prudential limitations on standing simply do not come into play.

1979); *Village of Bellwood* v. *Gladstone Realtors*, 569 F.2d 1013, 1020 n.8 (7th Cir. 1978), *aff'd on other grounds*, 441 U.S. 91 (1979); *Park View Heights Corp.* v. *City of Black Jack*, 467 F.2d 1208, 1214 (8th Cir. 1972). Section 804(d) of the Fair Housing Act provides that it shall be unlawful:

> To represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

42 U.S.C. 3604(d). This prohibition against providing false information creates a concomitant right to receive accurate information about housing availability without regard to race or color. *McDonald* v. *Verble*, 622 F.2d 1227 (6th Cir. 1980); *United States* v. *Long*, 1 EOHC (P-H) ¶ 13, 733 (4th Cir. 1974).

As noted above, Coleman, Willis, and Barr were employed by HOME, and thus, were acting on behalf of HOME when they sought information about rental vacancies from petitioner Havens Realty. *Steele* v. *Title Realty Co.*, 478 F.2d 380 (10th Cir. 1973). According to the complaint, petitioners repeatedly furnished HOME employees with conflicting information about vacancies based solely on the race of the employee. This conduct constitutes a violation of HOME's right to receive accurate information under section 804(d) of the Fair Housing Act. 42 U.S.C. 3604(d). *See McDonald* v. *Verble*, 622 F.2d at 1233; *United States* v. *Long*, 1 EOHC (P-H) ¶ 13,631, at 14,091; *McNeil* v. *P-N & S., Inc.*, 372 F. Supp. 658 (N.D. Ga. 1973); *United States* v. *Reddoch*, 1 EOHC (P-H)

¶ 13,569 (S.D. Ala.), *aff'd*, 467 F.2d 896 (5th Cir. 1972) (per curiam).[8]

This Court has consistently acknowledged that the deprivation of a statutory right, without more, constitutes a harm sufficient to confer standing. *Warth* v. *Seldin*, 422 U.S. at 500; *Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. 208, 212 n.3 (1974); *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205, 212 (1972) (White, J., concurring). Accordingly, HOME has satisfied the constitutional prerequisites for standing.

In the instant case, moreover, the injury to HOME constitutes far more than a technical violation of a statutory right. HOME asserts a distinct injury to the operation of its housing counseling and referral service resulting from the petitioners' unlawful conduct. Because the effectiveness of HOME's service depends on the accuracy of its information, the petitioners' provision of inaccurate information to HOME employees, in violation of the Fair Housing Act, directly interferred with HOME's ability to render reliable and effective service to its clients.

In addition, under its contract with the City of Richmond,

[8]In this regard, it is not legally significant that the information here was sought by an entity which intended to use it to assist others in locating housing, rather than by an individual who offered to rent the apartment himself. Unlike the language contained in section 804(a) of the Act, 42 U.S.C. 3604(a), which proscribes a refusal to sell or rent a dwelling on a prohibited basis *only after* "a bona fide offer" to rent or purchase has been made, section 804(d) contains no such restriction. Indeed, the fact that HOME and its employees may have been motivated in part by a desire to test whether housing was being made available on a nondiscriminatory basis is irrelevant for purposes of determining whether they have sustained an injury sufficient to confer standing. *Pierson v. Ray*, 386 U.S. 547, 558 (1967); *Evers v. Dwyer*, 358 U.S. 202, 204 (1958).

HOME was obligated to gather information on no fewer than 360 rental vacancies in the Richmond metropolitan area and make that information available to at least 600 clients. Therefore, petitioners' allegedly discriminatory conduct interfered with HOME's ability, not only to conduct its ordinary operations, but also to carry out its contractual obligations to the City of Richmond.

Furthermore, once HOME determined that the petitioners might be treating white and black homeseekers differently based solely on their race, it had to devote additional resources toward identifying and counteracting these racially discriminatory practices. This, in turn, interfered with the efficient operation of HOME's counseling and referral service by requiring HOME to divert resources away from assisting other clients in locating housing.

Courts frequently have conferred standing on nonprofit organizations based on allegations of interference with the organization's provision of services to their clients. For example, in *Baird* v. *Bellotti*, 393 F. Supp. 847 (D. Mass. 1975), *vacated and remanded on other grounds*, 428 U.S. 132 (1976), a three-judge court found that a nonprofit corporation providing abortion counseling and related services had standing to challenge a state anti-abortion law, not only because the organization conceivably might become subject to criminal liability, but also "by the recognition that even general enforcement of the statute against physicians alone would seriously interfere with its ongoing activities." 393 F. Supp. at 851. *Accord Planned Parenthood Association of Kansas City* v. *Ashcroft*, 483 F. Supp. 679, 683 (W.D. Mo. 1980); *Akron Center for Reproductive Health, Inc.* v. *City of Akron*, 479 F. Supp. 1172, 1183-84 (N.D. Ohio 1979). Similarly, in *Wounded*

Knee Legal Defense/Offense Committee v. *F.B.I.*, 507 F.2d 1281 (8th Cir. 1974), an organization formed to provide free legal services to defendants in criminal cases was held to have standing to maintain an action against the F.B.I. based on allegations that the Bureau had interfered with the organization's efforts to provide effective legal services to its clients. *Accord Keker* v. *Procunier*, 398 F. Supp. 756, 765 (E.D. Cal. 1975).[9]

In their brief, petitioners correctly point out that HOME's standing cannot be grounded solely on its abiding interest in eliminating unlawful discrimination in housing. Brief for Petitioners, p. 19. In *Sierra Club* v. *Morton, supra*, this Court held that an organization's abstract concern with a social problem does not provide a substitute for the concrete injury required by Article III. In so holding, this Court

[9]*See also Scientists Inst. for Pub. Information* v. *Atomic Energy Comm'n*, 481 F.2d 1079, 1086-87 n.29 (D.C. Cir. 1973) (nonprofit organization, whose activities included publication of scientific information relevant to important social issues, had standing to challenge an agency's decision not to provide an impact statement on one of its programs based on the claim that the decision interfered with the organization's ability to publish information on the program); *Mass. Hosp. Ass'n* v. *Harris*, 500 F. Supp. 1270 (D. Mass. 1980) (nonprofit hospital association had standing on its own behalf to challenge procedures used to adopt state medicaid reimbursement regulations and to mount facial challenge to the regulations, based on its claim that the regulations denied it participation in the ratemaking process, contary to federal requirements); *Aiken* v. *Obledo*, 442 F. Supp. 628 (E.D. Cal. 1977) (nonprofit corporation providing legal services to indigents had standing to challenge the Secretary of Agriculture's failure to publish food stamp certification instructions on the grounds that the failure interfered with the corporation's ability to represent its clients effectively.) *See also* Note, *Informational Injuries as a Basis for Standing*, 79 Column. L. Rev. 366 (1979).

reaffirmed that, to satisfy the constitutional requirements of standing, a plaintiff must allege not only that there has been injury in fact to someone, but that the plaintiff himself "is among the injured." 405 U.S. at 735. *Accord Simon* v. *Eastern Kentucky Welfare Rights Organization,* 426 U.S. at 39-40; *Schlesinger* v. *Reservists Committee to Stop the War,* 418 U.S. at 220-21.

In challenging HOME's right to sue on its own behalf, petitioners argue that HOME is an organization "having nothing more than an abstract concern with housing discrimination" (Brief for Petitioners, p. 21), and that to accord HOME standing necessarily means that *"any* organization with an interest in *any* problem, ...is similarly injured by the existence of the problem itself." *Id.* at 20 (emphasis in original). [10] Petitioners' argument, however, misconceives the basis for HOME's standing and the import of this Court's decisions on organizational standing.

First, HOME does not predicate its right to sue on an abstract concern for open housing. Rather, it alleges that there has been both a violation of its own statutory right and a concrete injury to the operation of one of its services resulting from that violation. It is on these grounds that the instant case differs so sharply from cases in which organizational standing has been denied. *See, e.g., Mountain States Legal Foundation* v. *Costle,* 630 F.2d 754 (10th Cir. 1980), *cert. denied,* 101 S.Ct. 1770 (1981); *Village of Bellwood* v. *Gladstone Realtors, supra; Mulqueeny* v. *National Commission on the Observance of International Women's Year, 1975,* 549 F.2d 1115 (7th Cir. 1977). For example, in none of the cases cited above

[10] Amicus National Association of Realtors (NAR), in making this same point, characterizes HOME and its employees as "self-selected 'civil rights' vigilantes." Brief of NAR, p. 2.

were there allegations that the defendants' conduct hampered or interfered with the organization's ability to conduct its daily business or carry out its programs. Instead, plaintiffs' standing in those cases allegedly was grounded on the claim that the challenged conduct either was inimical to the organization's principles or would result in a setback to the organization's goals.[11]

Second, the fact that HOME undertook to operate a housing counseling and referral service based on its altruistic desire to promote fair housing, rather than for pecuniary ends, does not undercut the organization's standing to maintain this action. Neither *Sierra Club* nor its progeny stand for the proposition that an organization's special interest in a social problem automatically precludes the organization from invoking federal-court jurisdiction.[12] In

[11]In *Mountain States*, the court expressly noted that the organizational plaintiff did not contend that "the challenged EPA actions will in anywise impair [the organization's] functions and activities." 630 F.2d at 767. Similarly, in *Mulqueeny*, the plaintiff did not allege that the challenged conduct interfered with the organization's ability to carry out its programs or activities, but only that the defendant's actions might result in the legislative defeat of a position advocated by the organization. 549 F.2d at 1119, 1121. Finally, in *Village of Bellwood*, the fair housing organization failed to allege that the defendants' conduct interfered with its provision of housing counseling or other services to its clients. In that case, the only allegation of injury to the organization was a general claim that the defendants' conduct "interferes with the Council's mission and costs it funds to attack." 569 F.2d at 1017.

[12]Indeed, far from precluding organizational standing, HOME's abiding interest in open housing demonstrates the importance of according it standing to redress injuries to its ongoing operations. HOME's goals of furthering fair housing and promoting development of integrated communities do not reflect merely its abstract notion of the public good. Rather, they represent a national policy which "Congress considered to be of the highest priority." *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. at 211.

(continued)

Village of Arlington Heights v. *Metropolitan Housing Development Corp., supra,* this Court held that an organizational plaintiff had standing to challenge interference with its proposed construction of a subsidized housing project, regardless of whether the organization had sustained financial loss as a result of the defendants' conduct. In that case, the organization was accorded standing notwithstanding the fact that "[i]ts interest in building [the project] stem[med] not from a desire for economic gain, but rather from an interest in making suitable low-cost housing available in areas where such housing is scarce." 429 U.S. at 263. Similarly, in one recent case, in which organizational plaintiffs that provide housing referral services were accorded standing to raise claims of racial discrimination, the court made this same point in language which applies forcefully to the case at bar:

> . . .In the context of the instant case, there is no doubt that the organizational plaintiffs would have standing if they acted as paid referral agencies for low-income apartment seekers and lost profits because of racial discrimination in housing. The fact that the organizations provide identical services but do so without charge should not affect their claim to standing.

(footnote continued from preceding page)

Courts have consistently recognized that organizations such as HOME, and their employees, play an indispensable role in implementing that policy and in securing the enforcement of important federal statutory rights. *Grant v. Smith,* 574 F.21d 252, 254 n.3 (5th Cir. 1978); *Wharton v. Knefel,* 562 F.2d 550, 554 (8th Cir. 1977); *Hamilton v. Miller,* 477 F.2d 908, 909-10 n.1 (10th Cir. 1973). For this reason, both Congress and the courts have afforded special protection to organizations and individuals, such as these, which encourage or aid others in the exercise of their rights to equal opportunity in housing. *See, e.g.,* 42 U.S.C. 3617; *Green v. Griffith,* 3 EOHC (P-H) ¶ 15,289 (S.D. Ohio 1979); *Northside Realty Assocs. v. Chapman,* 411 F. Supp. 1195 (N.D. Ga. 1976); *United States v. Wisconsin,* 395 F. Supp. 732 (W.D. Wis. 1975). *Cf. Crumble v. Blumthal,* 549 F.2d 462 (7th Cir. 1977); *Smith v. Stechel,* 510 F.2d 1162 (9th Cir. 1975); *United States General, Inc. v. City of Joliet,* 432 F. Supp. 346, 352 (N.D. Ill. 1977).

> The touchstone should not be remuneration, then, but rather the nature of the organization's function. If it merely monitors and perhaps publicizes a problem, it suffers no injury in fact when the problem worsens. If, however, the organization takes an active role in combatting a social ill, by, for example, the provision of services to clients, it may suffer injury in fact when relevant laws are violated, regardless of whether the organization is motivated by the desire for profit or by social conscience.

Huertas v. *East River Housing Corp.*, 81 F.R.D. 641, 652-53 n.16 (S.D.N.Y. 1979). Thus, when an organization alleges a concrete injury to its own operations and not just a setback to its abstract principles, the organization has standing, irrespective of the underlying motive for its activities.

Finally, as noted above, HOME was under special contract with the City of Richmond to furnish housing counseling services to city residents. Therefore, petitioners' conduct not only interfered with HOME's ability to carry out its normal operations. It also interfered with the organization's ability to fulfill its contractual obligations to the City of Richmond.

In short, here, it is HOME's personal interest in ensuring the efficient operation of one of its service programs which supplies the "essential dimension of specificity" necessary to confer standing on the organization. *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. at 263; *Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. at 221.

II.

HOME HAS STANDING TO SUE ON BEHALF OF ITS MEMBERS

Even in the absence of injury to itself, an organization may have standing solely as a representative of its members. *Warth* v. *Seldin*, 422 U.S. at 511; *Meek* v. *Pittenger*, 421 U.S. 349, 355-56 n.5 (1975); *National Motor Freight Association* v. *United States*, 372 U.S. 246 (1963).

To establish representational standing, an organization must allege that "its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action" and that "the nature of the claim and of the relief does not make individual participation of each injured party indispensable" to the resolution of the suit. *Warth* v. *Seldin*, 422 U.S. at 511. More recently, this Court held that:

> . . . an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Hunt v. Washington State Apple Advertising Commission, 432 U.S. at 343. In the case at bar, HOME has satisfied all three requirements for representational standing.

A. HOME's Members Have Sustained The Requisite Injury in Fact to Sue on Their Own Behalf

As noted above, *supra* n. 7, Congress has defined standing under the Fair Housing Act to be as broad as permitted by

Article III, thereby setting aside prudential limitations on standing. *Village of Bellwood*, 441 U.S. at 109; *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. at 209. Consequently, to establish standing to prosecute claims under the Fair Housing Act, a plaintiff need only show that he personally has suffered an injury in fact as a result of the defendant's putatively unlawful conduct. *Village of Bellwood*, 441 U.S. at 99-100.

In the instant case, the complaint alleges that petitioners have engaged in a policy and practice of racial steering (App. 15-17), which has "contribute[d] to maintaining existing neighborhood segregation and inhibit[ed] the development of stable racially integrated neighborhoods" (App. 14), and has deprived residents of Henrico County, Virginia, and those who have sought to rent in Henrico County, "of the right to the important social, professional, business and economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities." (App. 12, 17). The complaint further alleges that, as a result of the petitioners' conduct, HOME members have likewise "been deprived of the right to the important social, professional, business and economic, political and aesthetic benefits of interracial associations." (App. 17-18).

There is no question that interference with the development of racially integrated neighborhoods and the loss of important benefits of interracial associations are distinct and palpable injuries sufficient to confer standing. *Village of Bellwood*, 441 U.S. at 110-11, 113-14; *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. at 209-11. *Cf. Linmark Associates, Inc.* v. *Willingboro*, 431 U.S. 85, 94 (1977). Indeed, the allegations of injury in the instant case

are virtually identical to those found to support the standing of plaintiffs in *Village of Bellwood* and *Trafficante.*[13]

In challenging HOME's standing to sue on behalf of its members, petitioners do not contest the palpability of the alleged injuries, but rather, challenge the sufficiency of the pleadings with respect to the causal connection between the injury and the challenged conduct. Brief for Petitioners, pp. 13-14. In addressing this claim, it is important to consider the procedural posture of this case.

In the instant case, the complaint was dismissed for want of standing before any opportunity was afforded for submission of affidavits or other proofs. Plaintiffs filed this action on January 9, 1979 (App. 11-20) and defendants responded with a motion to dismiss on January 31, 1979. (App. 21-25). On February 16, 1979, prior to receiving plaintiffs' memorandum in opposition to the motion to dismiss, the district court rendered its decision dismissing the claims of HOME, Coleman, and Willis. (App. 32).[14]

[13]Lower courts also have conferred standing based on similar allegations of injury to the right to enjoy the benefits of interracial associations. *See, e.g., Shannon v. HUD,* 436 F.2d 809, 818 (3rd Cir. 1970); *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.,* 429 F. Supp. 486, 489 (E.D.N.Y. 1977); *Sherman Park Community Ass'n v. Wauwatosa Realty Co.,* 486 F. Supp. 838, 842 (E.D. Wis 1980); *Fair Housing Council of Bergen County v. Eastern Bergen County Multiple Listing Serv. Inc.,* 422 F. Supp. at 1081-82; *Village of Forest Park v. Fairfax Realty,* 1 EOHC (P-H) ¶ 13,699 (N.D. Ill. 1975); *Fox v. HUD,* 416 F. Supp. 954, 955-56 (E.D. Pa. 1976); *South East Chicago Comm'n v. HUD,* 343 F. Supp. 62, 66-67 (N.D. Ill. 1972), *aff'd,* 488 F.2d 1119 (7th Cir. 1973).

[14]On February 16, 1979, plaintiffs filed a motion to reconsider (App. 36-37) and, on February 20, 1979, submitted their memorandum in opposition to defendants' motion to dismiss, which, *inter alia,* requested that a final ruling on HOME's standing be deferred until after the deposition of HOME's Executive Director scheduled for February 27. (App. 51, n.6). On February 22, 1979, the district court denied plaintiffs' motion to reconsider and ruled that it would not consider plaintiffs' memorandum. (App. 55).

In its memorandum opinion, the district court expressly relied on *TOPIC* v. *Circle Realty*, 523 F.2d 1273 (9th Cir.), *cert. denied*, 429 U.S. 859 (1976), which held that only direct victims of discrimination could initiate actions under section 812 of the Fair Housing Act, 42 U.S.C. 3612. (App. 34). The court also concluded that the respondents could not sue to vindicate the rights of third parties and that their allegations of deprivation of benefits from interracial asssociations asserted "no more than the general public interest." *Id.* In light of the court's belief that HOME and its employees could not sue under section 812 of the Act to assert the rights of third parties, it is understandable that the court choose not to look further into their allegations of injury. *See, e.g., Village of Bellwood*, 441 U.S. at 112-13 n.25; *Broadmoor Improvement Association, Inc.* v. *Stan Weber & Associates, Inc.*, 597 F.2d at 570. The court thereafter certified its ruling as a final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure and respondents filed their notice of appeal on March 15, 1979. (App. 61).

On April 17, 1979, this Court issued its opinion in *Village of Bellwood* which discredited the Ninth Circuit's decision in *TOPIC* v. *Circle Realty*, and thus, undermined the basis for the district court's decision in the instant case. Recognizing the import of this Court's decision, the district court made a "Formal Request to the United States Court of Appeals for the Fourth Circuit, pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, seeking remand of this action in light of *Gladstone, Realtors* v. *Village of Bellwood.*" *See Turner* v. *A.B. Carter, Inc.*, 85 F.R.D. 360, 363 n.3 (E.D. Va. 1980). The court of appeals nevertheless proceeded to consider this case. As a result, this matter was decided by both the district court and the court of appeals based solely on the allegations contained in the complaint.

It is axiomatic that a motion to dismiss should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim." *Hospital Building Co.* v. *Trustees of Rex Hospital,* 425 U.S. 738, 746-47 (1976); *Jenkins* v. *McKeithen,* 395 U.S. 411, 421-22 (1969); *Conley* v. *Gibson,* 355 U.S. 41, 45 (1957). Moreover, as this Court stated in *Warth* v. *Seldin,*

> For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party.

422 U.S. at 501.

In light of these principles, courts have not hesitated to reject challenges to a plaintiff's standing at the pleading stage of a case, where such challenges were based on an ungenerous reading of the complaint. *See, e.g., National Collegiate Athletic Association* v. *Califano,* 622 F.2d 1382, 1388 (10th Cir. 1980); *Save the Bay, Inc.* v. *United States Corps of Engineers,* 610 F.2d 322, 324-25 (5th Cir. 1980), *cert. denied,* 101 S.Ct. 269 (1981); *Committee for Full Employment* v. *Blumenthal,* 606 F.2d 1062, 1066-67 & n.21 (D.C. Cir. 1979). In so holding,these courts have shown a willingness to accept all reasonable inferences which can be drawn from the complaint in support of plaintiffs' standing.[15] For example, in *Save the Bay, Inc.* v. *United States Corps of Engineers, supra,* a nonprofit

[15]These rulings are consistent with, and derive from, the principle of notice pleading embodied in the Federal Rules of Civil Procedure. That principle discards the notion that a claimant must set forth in detail all relevant facts upon which he bases each claim. *Conley v. Gibson,* 355 U.S. at 47-48. *See also* Roberts, *Fact Pleading, Notice Pleading, and Standing,* 65 Cornell L. Rev. 390, 397-98 (1980).

organization alleged that its members were full and part-time residents of two counties located near a bay and that its members would be adversely affected by the proposed discharge of industrial wastewater into the bay. While noting that the complaint failed to allege that any of the organization's members actually used the bay or were injured in their use of its resources, the court concluded that one could infer from the complaint that at least some of the organization's members could show injury in fact, since "an obvious inference of the English language is that residents of a geographical area 'use' that geographical area." 610 F.2d at 325.[16]

In addition, courts which have encountered challenges to standing based solely on the complaint usually have afforded plaintiffs an opportunity, through amendment, affidavits, or other proofs, to furnish more detailed allegations of fact deemed necessary to support their standing. *See, e.g., Preterm, Inc.* v. *Dukakis,* 591 F.2d 121, 134 (1st Cir. 1979), *cert. denied,* 441 U.S. 958 (1979); *Environmental Defense Fund* v. *TVA,* 468 F.2d 1164, 1171-72 (6th Cir. 1972); *Sherman Park Community Association* v. *Wauwatosa Realty Co.,* 486 F. Supp. 838, 842 (E.D. Wis. 1980); *Huertas* v. *East River Housing Corp.,* 81 F.R.D. at 648-49; *Aiken* v. *Obledo,* 442 F. Supp. 628, 639 (E.D. Cal. 1977); *Wheatley Heights Neighborhood Coalition* v. *Jenna Resales Co.,* 429 F. Supp. 486, 488-89 & n.2 (E.D.N.Y. 1977). In *Warth* v. *Seldin,* this Court approved of this procedure as follows:

[16]By contrast, courts have applied considerably stricter standards when reviewing challenges to standing after a full evidentiary hearing or the submission of detailed proofs. *See, e.g., Citizens Concerned for Separation of Church and State v. City of Denver,* 628 F.2d 1289 (10th Cir. 1980); *Marchezak v. McKinley,* 607 F.2d 37 (3d Cir. 1979).

> . . .it is within the trial court's power to allow or to require the plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of plaintiff's standing. If, after this opportunity, the plaintiff's standing does not adequately appear from all materials of record, the complaint must be dismissed.

422 U.S. at 501-02. *See also Village of Bellwood,* 441 U.S. at 112 n.25; *Sierra Club* v. *Morton,* 405 U.S. at 735 n.8.

In the instant case, respondents have alleged that the petitioner's conduct contributed to maintaining segregated neighborhoods within Henrico County and that, as a result, members of HOME have been deprived of the benefits of interracial associations. Although the complaint does not specify where HOME's members reside, it is readily inferable that at least some of them reside in neighborhoods within Henrico County which have been adversely affected by the petitioners' conduct. While Henrico County is admittedly a large area, it is certainly conceivable that plaintiffs could establish at trial that the petitioners' conduct contributed to development of a number of segregated neighborhoods, in which HOME members reside, by steering black homeseekers away from its apartment complexes and toward traditionally black or transitional areas of the County. *See Sherman Park Community Association* v. *Wauwatosa Realty Co.,* 486 F. Supp. at 842.[17] Moreover, as respondents state in their brief, on remand, HOME will seek to establish that some of its

[17] In *Village of Bellwood,* 441 U.S. at 112 n.25, 114 n.29, this Court expressly left open the question of whether persons residing outside the precise area targeted by the defendants' conduct can sue under the Fair Housing Act.

members, in fact, reside in one of the petitioners' apartment complexes, namely Camelot Townhouses.[18]

Amici therefore suggest that, rather than address abstract questions on the basis of a nonexistent record, this Court should affirm the judgment of the court of appeals and permit the matter to be remanded to the district court. This result will serve several salutary purposes. First, it will afford the district court the opportunity it once sought to reconsider its ruling in light of this Court's decision in *Village of Bellwood. See Broadmoor Improvement Association, Inc.* v. *Stan Weber & Associates, Inc.*, 597 F.2d at 570. Second, it will provide respondents with the opportunity, normally afforded in such cases, to supply "further particularized allegations of fact deemed supportive of [their] standing." *Warth* v. *Seldin*, 422 U.S. at 501-02. Finally, it will obviate the need to decide the question left open in *Village of Bellwood, see* n.17 *supra*, if HOME succeeds in establishing that its members reside in, or near, one of petitioners' apartment complexes.

Of course, on remand, respondents bear the burden of proving all allegations of fact necessary to support their standing. *Village of Bellwood*, 441 U.S. at 115 n.31. Nevertheless, at this stage of the proceeding, respondents' allegations clearly are sufficient to show that HOME members have sustained sufficient injury to sue on their own behalf.

[18]These members would clearly have standing to sue on their own behalf based on their loss of the important benefits of interracial associations. *See Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. at 209-11.

B. The Interests of HOME's Members Are Germane to the Interests of the Organization

There is no question that HOME satisfies the second criterion for representational standing delineated in *Hunt* v. *Washington State Apple Advertising Commission,* 432 U.S. at 343. The interest which HOME's members seek to protect and the underlying goals of the organization are not only sufficiently close, they are identical. Both seek to secure and preserve the important benefits derived from interracial associations by eliminating discriminatory housing practices and promoting development of racially integrated communities. (App. 13-14, 18).

As noted above, many fair housing organizations were founded for the express purpose of protecting their members' right to live in an integrated community. *See, e.g., Broadmoor Improvement Association* v. *Stan Weber & Associates, Inc.,* 597 F.2d at 569;*Sherman Park Community Association* v. *Wauwatosa Realty Co.,* 486 F. Supp. at 840; *Wheatley Heights Neighborhood Coalition* v. *Jenna Resales Co.,* 429 F. Supp. at 487-88. Accordingly, it is entirely appropriate to permit such organizations to sue on behalf of members whose right to live in integrated communities is threatened.

C. Neither the Claims Presented Nor the Relief Requested Requires Individual Participation of HOME's Members

With respect to the final criterion in *Hunt* v. *Washington State Apple Advertising Commission,* the claims which HOME seeks to present on behalf of its members derive, not from facts or occurrences which are peculiar to individual members, but from the fact that HOME members reside in

areas affected by the petitioners' conduct. Because the loss of important benefits from interracial associations is shared by all members of HOME who reside in the affected communities, vindication of the right to these benefits does not require participation of individual members of the organization.

In addition, this is not a case where the organization seeks to recover damages on behalf of its members.[19] *Local 194, Retail, Wholesale and Department Store Union* v. *Standard Brands, Inc.*, 504 F. 2d 864 (7th Cir. 1976); *Massachusetts Hospital Association, Inc.* v. *Harris*, 500 F. Supp. 1270, 1276-77 (D. Mass. 1980). Here, plaintiffs seek a declaration regarding the legality of petitioners' conduct, an order enjoining the petitioners from engaging in certain discriminatory housing practices, and other affirmative relief designed to eliminate the lingering effects of these practices. (App. 18-19). This relief is declaratory and injunctive in nature. For this reason, "it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured." *Warth* v. *Seldin*, 422 U.S. at 515. *See also Hunt* v. *Washington State Apple Advertising Commission*, 432 U.S. at 343; *Huertas* v. *East River Housing Corp.*, *81* F.R.D. at 649. [20]

[19]To the extent that HOME seeks damages (App. 19, ¶ f) it does so only in its organizational capacity to redress an injury to itself. In fact, the court below expressly noted that HOME could not represent its members in individual claims for damages where the fact and extent of injury would require individualized proof. (App. 75).

[20]Because of the nature of the relief requested on behalf of HOME's members, it may be appropriate on remand for the district court to consider what effect, if any, the consent decree entered in *Coles v. Havens Realty Corp.*, 3 EOHC (P-H) ¶18,031, on February 17, 1981, has on this claim.

Finally, this is not a case where some members of the organization stand to benefit from the litigation, while others may be adversely affected by it. *Associated General Contractors of North Dakota* v. *Otter Tail Power Co.*, 611 F.2d 684, 691 (8th Cir. 1979). Nor is it a case where the views of individual members differ sharply with respect to the issues being litigated. *Harris* v. *McRae*, 448 U.S. 297 (1980); *National Constructors Association* v. *National Electrical Contractors Association, Inc.*, 498 F. Supp. 510, 521 (D. Md. 1980).

Accordingly, HOME is both an appropriate and suitable representative of its members and may maintain this action in its representational capacity.

CONCLUSION

For the foregoing reasons, amici urge that this Court affirm the judgment of the United States Court of Appeals for the Fourth Circuit and hold that, at this stage of the proceeding, respondent HOME has standing to maintain the action both in its organizational and representational capacities.

Respectfully submitted:

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